IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 63598-1-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
JOSE ANTONIO STRIDIRON,	)	UNPUBLISHED
	)	
Appellant.	)	FILED: June 21, 2010
	)	
	)	

Cox, J. – Jose Antonio Stridiron challenges his conviction for robbery in the second degree. He contends that the trial court abused its discretion in declining to give an instruction on the lesser included offense to second degree robbery of theft in the first degree. Stridiron also argues that there was insufficient evidence to support his conviction of second degree robbery. We disagree with both claims and affirm.

Kathryn Steidel was walking to work in downtown Seattle around 7:30 a.m. on February 9, 2009. She was holding a large white purse "in [her] right hand at [her] side." As she approached the corner of First Avenue and Bell Street, someone "came up behind [her] and just pulled the purse out of [her] hand." The person then sprinted away. The police later detained Stridiron and

arrested him based on identifications by two witnesses.

The State charged Stridiron with robbery in the second degree.

Prior to trial, Stridiron moved to dismiss the charge against him, arguing that the alleged facts did not constitute second degree robbery. The trial court denied the motion, concluding "[i]t's denied because it's unequivocal that it's alleged and there is going to be testimony to support that some degree of force was used . . . to remove the purse from the person of the victim. That's enough to sustain a robbery in the second degree allegation."[1]

At trial, after the State rested its case, Stridiron again moved to dismiss the charge against him, arguing that the element of force was not established. The court denied the motion.

In addition, Stridiron argued on his own behalf for an instruction on the lesser included offense of first degree theft. Specifically, Stridiron addressed the court as follows:

> THE DEFENDANT: The motion that I put—I wasn't putting in a motion to dismiss the charges. I was just indicating that the force, the element—the evidence that was presented by the victim and witnesses was insufficient evidence for a force element.
>
> THE COURT: I would hold otherwise.[2]

Stridiron did not testify at trial or call any witnesses. After the parties rested, Stridiron submitted a packet of proposed jury instructions, including

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[1] Report of Proceedings (April 21, 2009) at 28-29.

[2] Report of Proceedings (April 28, 2009) at 6.

instructions for the lesser included offense of first degree theft. The court declined to give the lesser included instructions. A jury convicted Stridiron as charged.

Stridiron appeals.

LESSER INCLUDED OFFENSE INSTRUCTION

Stridiron argues that his conviction for second degree robbery must be reversed because he was entitled to an instruction for first degree theft and the court declined to give it. We disagree.

In Washington, the right to a lesser included offense instruction is statutory.[3] "[A] defendant is entitled to an instruction on a lesser included offense if two conditions are met. First, each of the elements of the lesser offense must be a necessary element of the offense charged. Second, the evidence in the case must support an inference that the lesser crime was committed."[4] The first requirement of the test is referred to as the "legal prong," and the second requirement is referred to as the "factual prong."[5]

We review the legal prong of the test de novo.[6] The factual prong is reviewed for abuse of discretion.[7]

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[3] RCW 10.61.006 ("In all other cases the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he is charged in the indictment or information.").

[4] State v. Workman, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978).

[5] State v. Pittman, 134 Wn. App. 376, 384, 166 P.3d 720 (2006).

[6] State v. Walker, 136 Wn.2d 767, 771-72, 966 P.2d 883 (1998).

[7] State v. Hunter, 152 Wn. App. 30, 43-44, 216 P.3d 421 (2009), review

Here, the information alleged in relevant part,

> That the defendant, JOSE ANTONIO STRIDIRON . . . did unlawfully and with intent to commit theft, ***take personal property of another, to-wit: a purse***, from the person and in the presence of Kathryn Steidel, against her will, ***by the use*** or threatened use ***of immediate force***, violence and fear of injury to such person or her property.[8]

On appeal, the State properly concedes that the legal prong of the test is satisfied.[9] Each element of first degree theft[1] is a necessary element of second degree robbery[11] as charged in this case. Thus, the remaining question is whether the trial court abused its discretion by deciding that the evidence failed to support an inference that only the lesser included crime was committed.[12]

"'The purpose of [the factual prong of the test] is to ensure that there is

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denied, 168 Wn.2d 1008 (2010).

[8] Clerk's Papers at 1 (emphasis added).

[9] Brief of Respondent at 10 ("[A]t trial, the prosecutor incorrectly argued that first-degree theft was not a legal lesser included offence of second degree robbery.").

[1] "A person is guilty of first degree theft if he commits theft of property of any value . . . taken from the person of another." Former RCW 9A.56.030(1)(b) (2007). "'Theft means: To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services." RCW 9A.56.020(1)(a).

[11] A person commits robbery when he or she "***unlawfully takes personal property from the person of another*** . . . by the ***use*** . . . of ***immediate force*** . . . . Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial." RCW 9A.56.190.

[12] State v. Fernandez-Medina, 141 Wn.2d 448, 455, 6 P.3d 1150 (2000).

evidence to support the giving of the requested instruction.'"[13] This requires that the court "view the supporting evidence in the light most favorable to the party that requested the instruction."[14] And "the evidence must affirmatively establish the defendant's theory of the case—it is not enough that the jury might disbelieve the evidence pointing to guilt."[15]

First degree theft is defined as wrongfully taking property or services from the person of another with the intent to deprive him or her of such property or services.[16] This is elevated to second degree robbery "by the use or threatened use of immediate force, violence, or fear of injury to that person."[17] "Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking."[18] Any force or threat, however slight, is sufficient to sustain a robbery conviction.[19]

The primary difference between the crimes of first degree theft and second degree robbery, as charged in this case, is the use of force. Whether and to what extent Stridiron used force to take the purse was the subject of

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[13] Hunter, 152 Wn. App. at 43-44 (quoting Fernandez-Medina, 141 Wn.2d at 455).

[14] Fernandez-Medina, 141 Wn.2d at 455-56.

[15] Id.

[16] RCW 9A.56.020(1)(a), .030(1)(b).

[17] RCW 9A.56.190.

[18] Id.

[19] State v. Handburgh, 119 Wn.2d 284, 293, 830 P.2d 641 (1992).

Steidel's testimony at trial. On direct examination by the prosecutor, her testimony was as follows:

> Q. [Prosecutor] When you felt a tug at your purse, did your arm get thrown forward, how did that happen?
>
> A. It got pulled forward. It wasn't a tug, it was a natural extension of somebody pulling on your arm, and just once I got to the full extension—
>
> Q. Did you have a reflex or instinctive reaction when you felt that purse tug or pull?
>
> A. Well, it kind of all happened at once. There was no back and forth. It just came right out of my hand. . . .
>
> Q. My question was, though, when you first felt that tug, did you firm your grasp or do something else, if you remember?
>
> A. I don't think I had time to tighten up.[2]

The prosecutor then asked Steidel to stand up and demonstrate to the jury, with her hand and without her purse, just what happened when Stridiron took her purse. During that demonstration, the prosecutor described her actions:

> Q. . . . Okay. Just for the record, you are leaning forward a little bit and your arm is fully extended as a result of the tug or pull, is that correct?
>
> A. Yeah.
>
> Q. So did you lose your balance at all when you were leaning forward?
>
> A. No, no more than just the right foot.
>
> Q. For the record, when you say the right foot, as a result of the

[2] Report of Proceedings (April 27, 2009) at 15.

> pull, you had to put your right foot forward a little bit, is that correct?
>
> A. Yes.
>
> Q. So you were standing more upright before the pull of the purse, is that correct?
>
> A. Yes.
>
> Q. As a result of the pull, you had to lean forward a bit, is that correct?
>
> A. Yes.[21]

Following this demonstration, the prosecutor asked some follow up questions:

> Q. When it was pulled out of your hand, was it a gentle, artful sliding out of your hand or something else?
>
> A. No, just a quick tug out of my hand. It's hard to describe because it happened so quickly, there was just—it was a second, if that.
>
> Q. I understand it happened quickly. What I'm asking is was it a gentle pull or something else.
>
> A. Well, it was definitely a tug out of my hand. I mean, to get something out of your hand, you have to pull it hard enough to get it out, even if your hand wasn't at a full grip. My hand wasn't at a super loose grip. It was a regular grasp.[22]

No one else testified concerning the amount of force Stridiron used to take Steidel's purse.

The testimony and demonstration by Steidel show that Stridiron used

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[21] Report of Proceedings (April 27, 2009) at 16.

[22] Id. at 16-17.

more force to take the purse than what was inherent in the physical effort necessary to take it. According the Steidel, the tug on the purse pulled it out of her "regular grip." Moreover, her demonstration to the court and jury, as memorialized on the record by the prosecutor's comments, indicates that she had to put her foot forward to steady herself as a result of Stridiron taking the purse. The judge saw this demonstration. We did not. On this record, there simply is no evidence to provide an inference that Stridiron did not use any force to remove the purse from Steidel. The force here was not limited to the physical effort necessary to hold the purse.

To support his argument Stridiron argues that if a pickpocket steals something from a person's pocket, he commits theft in the first degree, not robbery.[23] He also points to LaFave and Scott's often-cited treatise on criminal law, which states that "[t]he weight of authority supports the view that there is not sufficient force to constitute robbery when a thief snatches property from the owner's grasp so suddenly that the owner cannot offer any resistance to the taking."[24] Regardless of whether these statements are correct statements of the law in Washington, they do not control here.

The "legislature has defined the crime of robbery as both a crime against property and a crime against the person. [This] encompass[es] both a taking of

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[23] State v. Netling, 46 Wn. App. 461, 465, 731 P.2d 11 (1987) ("if a pickpocket steals a quarter out of a person's pocket, he commits theft in the first degree").

[24] W. LaFave & A. Scott, Criminal Law § 8.11(d) at 781 (2nd ed. 1986).

property and a forcible taking against the will of the person from whom or from whose presence the property is taken."[25] The robbery statute at issue here expressly states that the "degree of force" used to take the property "is immaterial." This was no mere purse snatching. The force used was sufficient to take the purse from Steidel's grasp, resulting in her having to regain her balance as a result of the taking. There is no requirement of anything more.

The evidence does not raise an inference that Stridiron committed only the lesser included offense of theft in the first degree. The trial court did not abuse its discretion in declining to give the proposed instruction.

SUBSTANTIAL EVIDENCE

Stridiron argues in the alternative that insufficient evidence of force was presented to support his conviction for second degree robbery. We disagree.

In reviewing a challenge to the sufficiency of the evidence, we view all facts and reasonable inferences in the light most favorable to the State to determine whether any rational trier of fact could find the elements of the crime beyond a reasonable doubt.[26] A crime's elements may be established by either direct or circumstantial evidence, one being no more or less valuable than the other.[27] A challenge to the sufficiency of the evidence admits the truth of the

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[25] State v. Tvedt, 153 Wn.2d 705, 720, 107 P.3d 728 (2005).

[26] State v. Lord, 117 Wn.2d 829, 881, 822 P.2d 177 (1991), cert. denied, 506 U.S. 856, 113 S. Ct. 164, 121 L. Ed. 2d 112 (1992).

[27] State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

State's evidence.[28]

Any force or threat, no matter how slight, which induces an owner to part with his property is sufficient to sustain a robbery conviction.[29]

Steidel's unrefuted testimony and her demonstration to the jury are sufficient to support the State's burden of proof regarding the amount of force used in this case. Stridiron does not challenge the sufficiency of evidence as to any of the other elements of the crime. A rational trier of fact could have found beyond a reasonable doubt that Stridiron was guilty of the charge of second degree robbery.

We affirm the judgment and sentence.

Cox, J.

WE CONCUR:

Grosse, J

[28] State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

[29] State v. Ammlung, 31 Wn. App. 696, 704, 644 P.2d 717 (1982) (citing State v. Redmond, 122 Wash. 392, 210 P. 772 (1922)).